a happening which gives the immediate motive power for its production strikes the intelligence at once and is comparatively sure and easy of investigation. The fact that the effect is unexpected and unusual will not render its causation by the force remote.[13] The same is true when the material on which the force operates and in which it produces its effect is particularly predetermined by weakness or other peculiarity of structure to receive the effect which is produced.[14] This really disposes of the first of the two principal cases. Of course the work, and not merely the previous disease, must cause the injury, and whether it did or not may be a peculiarly difficult question of fact; but when it was found, as it was here, that the work which the employee was doing "so aggravated and accelerated a weak heart condition as to incapacitate her for work," the investigation is concluded.[15]

The other case is harder. The fall there cannot be traced directly to a push for which the employment is responsible,[16] for it was the driver's dizziness that threw him from the hack, and his employment did not make him dizzy. But the employment put him in a place where if he happened to be dizzy he would be more seriously hurt than if he were dizzy on the ground. Is this chance of extra harm enough to justify the statement that the employment caused the injury? The answer to this question will depend on what we mean precisely by "injury." If the injury to which causation must be traced is the contact of the plaintiff's body with the ground, we must say that the employment was not even a necessary antecedent of the injury, for he would have struck the ground just as certainly if he had been dizzy anywhere, except in bed. But if the injury to which causation must be traced is the plaintiff's broken rib, the employment comes into the direct and active causal sequence, for it was the potential energy of his position on the hack which, translated into kinetic energy during his passage to the ground, was the force that broke his rib. It is believed that the second possibility is preferable. Workmen's compensation looks not at what the defendant did, but at what the plaintiff suffered; it is the actual change in the condition of the claimant's body that founds the liability. That then ought to be the point of departure for all purposes; it is to that that causation should be traced.

DOES EXECUTION BY ONE JUDGMENT CREDITOR GIVE A PREFERENCE OVER EQUAL JUDGMENT LIENS? — Judgment liens were unknown at common law [1] and, though very general to-day, they are based entirely

[13] Smith *v.* London & Southwestern Ry. Co., L. R. 6 C. P. 14; Isham *v.* Dow's Estate, 70 Vt. 588, 41 Atl. 585. See Christianson *v.* Chicago, etc. Ry. Co., 67 Minn. 94, 96, 69 N. W. 640, 641; and Judge Smith's article, "Legal Cause in Actions of Tort," in 25 HARV. L. REV. 103, 114, 223, 303.

[14] State *v.* O'Brien, 81 Iowa 88, 46 N. W. 752; McCahill *v.* New York Transportation Co., 201 N. Y. 221, 94 N. E. 616, and the cases collected in 16 L. R. A. 268.

[15] See the cases cited in note 1 as under the principal Massachusetts case, especially Clover, Clayton & Co., Ltd. *v.* Hughes, [1910] A. C. 242.

[16] This is taking the facts of the case most unfavorably to the petitioner. See note 1, *supra*. If it was a jolt of the hack that threw him from the box, the case is very easy.

[1] See Hutcheson *v.* Grubbs, 80 Va. 251, 254; PRIDEAUX, LAW OF JUDGMENTS 4 ed., 1; 1 BLACK ON JUDGMENTS, 2 ed., § 397.

upon statutes.[2] The ordinary statute creating a judgment lien provides that the lien dates from the rendering, entering, or docketing of the judgment.[3] The simultaneous rendering, entering, or docketing of judgments [4] or the acquisition of realty by a debtor against whom there have been rendered, entered, or docketed judgments which are unsatisfied and outstanding [5] creates a situation where there are "equal judgment liens." By the great weight of authority the holder of one of these judgments may, by execution on the realty of the debtor, prefer his judgment lien over the other equal judgment liens.[6] A recent New York decision reaches a contrary result, overruling two prior New York decisions [7] which the majority opinion professed to distinguish, and holding that in spite of the prior execution under one of the judgments the property must be divided *pro rata* among the possessors of the equal judgment liens. *Hulbert* v. *Hulbert*, 216 N. Y. 430, 111 N. E. 70.

The cases representing the weight of authority were influenced, presumably, by a fancied analogy to the equitable principle that a creditor who has pursued into equity property of the debtor which cannot be reached at law is entitled to a preference as a reward of his diligence,[8] for they continually talk of diligence creating a preference among equal legal claims.[9] The analogy is inapt in that the execution reaches no assets which are in danger of extinction by an act of a third party. It subjects no property to the payment of this judgment which is not already irrevocably bound to the satisfaction of all judgments against the owner. It is in no way beneficial to the remaining creditors of the debtor but can benefit only the creditor who causes the execution to issue. Furthermore, any talk of diligence is confusing. Judgment liens are vested legal claims and the idea that among equal claimants the law prefers the diligent is a strange one. The preferable manner of attacking the problem is to concede that the statute may have created only an incomplete right which, to be perfected, may require further action by the lienholder, whether that action be diligent, hasty, or fortuitous. So it would seem that the effect of an execution in pursuance of a judgment lien would depend upon the true nature of the lien rather than upon the quality of the lienor's action.

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[2] 1 BLACK ON JUDGMENTS, 2 ed., § 398.

[3] 1 BLACK ON JUDGMENTS, 2 ed., § 443.

[4] 2 FREEMAN ON JUDGMENTS, 4 ed., § 369.

[5] Matter of Hazard, 73 Hun. (N. Y.) 22; Moore *v.* Jordon, 117 N. C. 86, 23 S. E. 259.

[6] Adams *v.* Dyer, 8 Johns. (N. Y.) 347; Smith *v.* Lind, 29 Ill. 24; Bruce *v.* Vogel, 38 Mo. 100; Elston *v.* Castor, 101 Ind. 426; Cook *v.* Dillon, 9 Ia. 407. See 2 FREEMAN ON EXECUTIONS, 3 ed., § 203; 1 BLACK ON JUDGMENTS, 2 ed., § 455. In Iowa the general rule, though applied to judgments entered on the same day, is not applied to judgment liens on after-acquired property. Kisterson *v.* Tate, 94 Ia. 665, 63 N. W. 350. Contrary to the general rule, Metzler *v.* Kilgore, 3 P. & M. (Pa.) 245; Matula *v.* Lane, 22 Tex. Civ. App. 391, 399; Rockhill *v.* Hanna, Fed. Cas. 11980. But *cf.* the last case on appeal, 15 How. (U. S.) 189.

[7] Adams *v.* Dyer, *supra*, 8 Johns. (N. Y.) 347; Waterman *v.* Haskin, 11 Johns. (N. Y.) 228.

[8] No doubt that is a well-settled principle of equity. Corning *v.* White, 2 Paige (N. Y.) 567; Pullis *v.* Robison, 73 Mo. 201; Bradley *v.* United Wireless Telegraph Co., 79 N. J. E. 458, 81 Atl. 1107.

[9] See Smith *v.* Lind, 29 Ill. 24, 30; Bruce *v.* Vogel, 38 Mo. 100, 106; Elston *v.* Castor, 101 Ind. 426, 439; Cook *v.* Dillon, 9 Ia. 407, 414.

Now a judgment lien confers upon the judgment creditor the right to levy execution on the land of the debtor to the exclusion of all subsequent encumbrances.[10] But it seems to be settled that a judgment lien constitutes no property in the land itself.[11] Consequently a judgment lienor cannot, prior to levy, enjoin waste on the land of the debtor.[12] Nor can a senior judgment lienor claim a share in the proceeds of a sale under a junior judgment lien, but is compelled to be satisfied with his still existent right to levy on the land itself.[13] Obviously, then, the equal judgment liens, since they cannot vest as proportionate estates, create conflicting rights. On the one hand it might be said that each of these judgment lienors has the right to levy to the exclusion of all except prior encumbrancers and that an execution by one is a seizure of what he has a legal right to take and keep. On the other hand it might be said that each judgment lienor has the right to levy to the exclusion only of subsequent encumbrancers, that the exercise of no one of those equal rights may defeat the others, and therefore that the equal lienors must eventually share *pro rata*. Of course these are mere statements of conclusions. The propriety of one or the other depends upon the interpretation of the statute creating the judgment lien in the light of its proper purpose. Though it is difficult to say which of these two constructions is correct, the principal case seems to lay down the preferable rule. A hasty execution is not always desirable, and it may be very beneficial to the debtor class as well as comforting to the creditors to give to the latter rights which may be rested upon securely. In most respects execution is not necessary to protect the creditor in his rights against the land of the debtor. To make it necessary in this one instance may have an evil and disquieting effect. The judgment lien is an encumbrance the existence of which may be easily ascertained and there would seem to be no policy requiring its prompt enforcement. The first statutory judgment lien, the "elegit," [14] gave to the judgment creditor class rights against the realty of the debtor, and those rights could not be defeated by fraudulent conveyances.[15] But within the class a preference could

[10] Howard *v.* Ry., 101 U. S. 837; Rankin *v.* Scott, 12 Wheat. 177; Stewart *v.* Perkins, 110 Mo. 660, 19 S. W. 989; Oates *v.* Munday, 127 N. C. 439, 37 S. E. 457.

[11] In Conard *v.* Atl. Ins. Co., 1 Peters (U. S.) 386, 443, the court, *per* Story, J., says, "Now, it is not understood that a general lien by judgment on land, constitutes, *per se*, a property or right in the land itself. It only confers a right to levy on the same to the exclusion of other adverse interests subsequent to the judgment. . . . In short, a judgment creditor has no *jus in re*, but a mere power to make his general lien effectual by following up the steps of the law and consummating his judgment by execution and levy on the land." This language is universally approved. See Dail *v.* Freeman, 92 N. C. 351, 356; Walton *v.* Hargroves, 42 Miss. 18, 26; Young *v.* Templeton, 4 La. Ann. 254, 257. See also 1 BLACK ON JUDGMENTS, 2 ed., § 400; 2 FREEMAN ON JUDGMENTS, 4 ed., § 338.

[12] Independent School District *v.* Werner, 43 Ia. 643. See Lanning *v.* Carpenter, 48 N. Y. 408, 412. But a judgment lienor may bring a bill in equity to remove a cloud on the title to the debtor's land. Scottish Am. Mortgage Co. *v.* Follansbee, 14 Fed. 125.

[13] Dysart *v.* Brandreth, 118 N. C. 968, 23 S. E. 966; Commercial Bank of Manchester *v.* Yazoo Co., 7 Miss. 530.

[14] The writ of "eligit" was authorized by the STATUTE OF WESTMINSTER, II., 13 Edw. I, c. 18.

[15] The courts early held that the right to reach the land by "eligit" could not be defeated by act of the debtor. See PRIDEAUX, LAW OF JUDGMENTS, 4 ed., 9.

be gained by prompt action.[16] Under modern statutes this is changed and judgments are ranked according to the date when they became liens.[17] It seems reasonable to say that the purpose of these modern statutes is to make a creditor secure in his rights the moment his judgment becomes a lien, irrespective of execution, thereby protecting him against all except prior encumbrancers.

THE CONSTITUTIONALITY OF SECTION 11 (K) OF THE FEDERAL RESERVE ACT. — The Supreme Court bids fair to be called upon soon to pass on the validity of the Federal Reserve Act of 1913,[1] now in operation for something over two years.[2] Section 11 (K)[3] by which the Federal Reserve Board is empowered "to grant, by special permit to banks applying therefor, when not in contravention of state or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds, under such rules and regulations as the said board may prescribe," has been declared by the Supreme Court of Illinois to be unconstitutional. *People* v. *Brady*, 271 Ill. 100, 110 N. E. 864. And the same issue is now before the Supreme Court of Michigan.[4] The question considered by the court to be of principal importance was whether Congress has constitutional power to erect a banking corporation with the additional powers of a trust company. Unfortunately, the language of the opinion [5] would seem to indicate that the court decided against the statute for want of an affirmative showing of such existing conditions as would justify it. If this means that the court disregarded the presumption in favor of the validity of a statute, the authority of the decision is shaken at the outset; for no proposition is better settled.[6] On the other hand the court quite properly, as it seems, dismissed the contention that the act is bad as involving an unconstitutional delegation of legislative power.[7]

Assuming that it is necessary to decide the present limits of the power of Congress to charter a corporation, some interesting questions are raised. It is clear that there is in the federal government no general incorporat-

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[16] See Rowe *v.* Bant, 1 Dick. (Ch.) 150. And see PRIDEAUX, LAW OF JUDGMENTS, 4 ed., 55.

[17] Rankin *v.* Scott, *supra*, 12 Wheat. 177; Andrews *v.* Wilkes, 7 Miss. 554.

[1] U. S. COMP. STAT. (1913), § 9785, 38 STAT. AT L. 251.

[2] The act was approved Dec. 23, 1913.

[3] U. S. COMP. STAT. (1913), § 9794, 38 STAT. AT L. 262.

[4] Atty.-Gen. *v.* First National Bank (No. 26853, *quo warranto*).

[5] 110 N. E. 864, 868.

[6] See Butterfield *v.* Stranahan, 192 U. S. 470, 492; County of Livingston *v.* Darlington, 101 U. S. 407, 417; Dragovich *v.* Iroquois Iron Co., 269 Ill. 478.

[7] The distinction between legislation and administration, though in theory clear, in practice presents in each case a question of degree. As defined, the line is a plain one, the function of administrative officials being to determine and act upon issues of fact. See Cincinnati, Wilmington, etc. R. Co. *v.* Commissioners, 1 Ohio St. 77, 88; Locke's Appeal, 72 Pa. 491, 498, 499. Yet conclusions as to reasonableness and propriety are now commonly recognized as within their sphere of decision. See Field *v.* Clark, 143 U. S. 649, 693; Chicago, B. & Q. R. *v.* Jones, 149 Ill. 361, 378. So far as the present statute is concerned it seems sufficiently evident that the powers conferred on the Federal Reserve Board are less extensive in this regard than those now exercised by the Interstate Commerce Commission. See Houston and Texas Ry. *v.* U. S., 234 U. S. 342, 355.